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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130903776-3776-01]

RIN 0648-BD66

Fisheries of the Exclusive Economic Zone Off Alaska; Modifications to Identification Markings on Fishing Gear Marker Buoys

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise the identification marking requirements for fishing gear marker buoys (buoys) used in Federal waters off Alaska. This proposed rule would eliminate the requirement that hook-and-line, longline pot, and pot-and-line buoys be marked with the vessel's name. The requirement to mark buoys with either the vessel's Federal fisheries permit number or Alaska Department of Fish and Game (ADF&G) number remains in effect. This action is needed to remove a regulatory requirement that is unnecessary. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI Groundfish FMP), the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA Groundfish FMP), and other applicable laws.

DATES: Comments must be received no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2013-0137, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0137, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only.

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from

<http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address and by e-mail to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Michael Camacho, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS Alaska Region manages the U.S. groundfish fisheries in the Exclusive Economic Zone off Alaska under the BSAI and GOA Groundfish FMPs. These FMPs were prepared by the North Pacific Fishery Management Council, under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and other applicable laws, and approved by the Secretary of Commerce. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

Federal regulations pertaining to gear markings for groundfish are set forth at § 679.24. These regulations apply to operators of vessels required to carry a Federal fisheries permit (FFP) while fishing in the groundfish and halibut fisheries in Federal waters off Alaska. The proposed rule implementing these requirements was published on August 16, 1989 (54 FR 33737), and the final rule on January 2, 1990 (55 FR 31). Buoys are used to indicate the positions of hook-and-line, pot, and pot-and-line gear in these fisheries. Section 679.24 requires buoys to be marked to make it possible to identify the vessel from which the gear was deployed. The NMFS Office of Law Enforcement and the United States Coast Guard use the identification markings from buoys when issuing violations, prosecutions, and other enforcement actions. Cooperating fishermen use

the identification markings to report the placement or occurrence of gear in unauthorized areas. Identification markings are also necessary to facilitate the return of lost or stolen gear. Fishermen that correctly mark their gear ultimately benefit because this deters unauthorized and illegal fishing and reduces the need for more burdensome regulations.

Federal regulations at § 679.24(a) require that buoys carried onboard or used by any vessel subject to 50 CFR part 679 that is using hook-and-line, longline pot, or pot-and-line gear must be marked with the vessel's name and either the vessel's FFP number or the vessel's Alaska Department of Fish and Game (ADF&G) vessel registration number. In addition, the markings "shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible."

These regulations apply to "vessels regulated under this part" which refers to those vessels required to carry FFPs under § 679.4(b). FFPs are required for vessels fishing for groundfish (a legal category that does not include halibut) in the GOA or BSAI, or fishing for any non-groundfish species when incidentally caught groundfish must be retained. Regulations at § 679.7(f)(8) prohibit vessels with individual fishing quota (IFQ) halibut or sablefish on board from discarding rockfish or Pacific cod under various conditions. Thus, vessels used to fish for halibut IFQ are required to have FFPs and comply with all regulations in 50 CFR part 679 that apply to vessels required to have FFPs, including requirements for marking buoys. Other non-groundfish fisheries have no comparable discard prohibitions.

Identification markings on buoys in the Federal waters off Alaska also are regulated by the State of Alaska (State) and the International Pacific Halibut Commission (IPHC). The State shares management responsibilities with NMFS for king crab and Tanner crab in the Federal

waters off Alaska, and regulates the buoy identification markings in these fisheries. The State requires at least one buoy on each commercial king or Tanner crab pot or ring net to be legibly marked with the permanent ADF&G license number of the vessel using the gear (5 AAC 34.051; 5 AAC 35.051). Identification marking requirements for halibut gear buoys are set by the IPHC. The IPHC's regulations for 2013 require that all setline or skate buoys carried onboard or used by any U.S. vessel for commercial halibut fishing shall be marked with the vessel's state license number or the vessel's registration number. Both State and IPHC commercial identification markings must be maintained in a legible condition, in characters at least four inches high (10.2 cm) and one-half-inch (1.3 cm) wide, in a contrasting color, and visible above the water. The principal difference between the State and IPHC commercial regulations and 50 CFR part 679 is the requirement for buoys to be marked with the vessel name.

Information on the extent of compliance with the existing regulations is not available; however, non-compliance has not been raised as a concern by enforcement agencies.

Description of the Proposed Action

The proposed action would eliminate the requirement that buoys carried onboard or marking the location of hook-and-line, longline pot, and pot-and-line gear deployed by vessels with FFPs be marked with the vessel's name. This action is needed to remove a regulatory requirement that experience has shown is not necessary. While one vessel may share the same name as another vessel, vessel identification numbers are exclusive and unique to the recipient vessel. Therefore, the proposed rule would eliminate the requirement in § 679.24(a) to mark buoys with the vessel's name, but maintain the requirement for marking buoys with either the vessel's FFP number or ADF&G number. The proposed action should reduce costs to vessel owners by reducing the labor and materials needed to mark buoys. In addition, the proposed

action would make buoy marking regulations at § 679.24(a) consistent with Alaska's State crab and IPHC regulations.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI and GOA Groundfish FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined not to be significant for the purposes of Executive Order 12866.

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts this action may be expected to have. The RIR finds that this action has a positive net economic impact to commercial fishing operations since it reduces the cost of compliance with identification marking requirements for buoys. This action does not create additional administrative costs and does not impose new requirements on fishing operations, or modify other existing ones.

Section 610 of the Regulatory Flexibility Act (RFA) requires "periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. ... The purpose of the review shall be to determine which such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities." Regulations requiring vessel names

on buoys was identified by NMFS during a section 610 review of past final rules as a requirement that was not necessary and could be removed from regulations.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule would have on small entities, if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in the Background and Description of the Proposed Action sections of this proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

On June 20, 2013, the Small Business Administration issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398; June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. The new size standards were used to prepare the IRFA for this action.

Vessels are directly regulated by this action when required to carry an FFP and using hook-and-line, pot, or pot-and-line gear in Federal groundfish or halibut fisheries in the GOA or BSAI. NMFS estimates that, in 2012, the most recent year for which gross revenues information is available, 761 entities would have been directly regulated by this action. NMFS estimates that 693 would have been small entities. Median gross revenues for the small entities would have been about \$327,000, while 75 percent would have had gross revenues under about \$779,000, and 25 percent would have had gross revenues under about \$144,000. The 99th percentile of gross revenues was about \$2,974,000.

An IRFA also requires a description of any significant alternatives to the preferred alternative that accomplish the stated objectives, are consistent with applicable statutes, and that

would minimize any significant economic impact of the proposed rule on small entities. The preferred alternative (the action alternative removing the requirement that vessel names be placed on marker buoys) places somewhat smaller obligations on directly regulated small entities than the alternative of retaining the status quo. Thus, there are no alternatives that have a smaller adverse economic impact on directly regulated small entities.

This action will reduce, in a small way, the reporting and recordkeeping requirements of small entities participating in the BSAI and GOA groundfish fisheries.

The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by the alternatives under consideration.

Collection-of-Information Requirements

This rule contains collection-of-information requirements, subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to the OMB for approval under OMB control number 0648-0353. The public reporting burden is estimated to average per response 10 minutes or less to collect the information and paint it on a buoy.

This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden

on the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments on these or any other aspects of the collection of information to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 26, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.24, revise paragraph (a)(1) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(a) * * *

(1) All hook-and-line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under this part shall be marked with the vessel's Federal fisheries permit number or ADF&G vessel registration number.

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